

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 160

June 9, 1999, 6:54 p.m.
Page S-6780 Temp. Record

Y2K LAWSUIT ABUSE PROTECTIONS/No Reforms for Consumers

SUBJECT: Y2K Act . . . S. 96. Leahy amendment No. 611 to the McCain substitute amendment No. 608.

ACTION: AMENDMENT REJECTED, 32-65

SYNOPSIS: As reported, S. 96, the Y2K Act, will enact numerous reforms to protect companies from abusive litigation related to year 2000 (Y2K) computer date change problems. Without passage of this reform bill, litigation costs could reach \$1 trillion (12 percent of the entire United States' economy), potentially crippling the competitiveness of the United States' high technology industry and raising costs for consumers and for all businesses that use computers and automated systems.

The McCain substitute amendment would make additional compromise changes (see vote No. 120 for a description of the first set of compromise changes), including that it would eliminate the director and officer liability caps, it would eliminate punitive damages caps for businesses with more than 50 employees, it would provide that State evidentiary standards would be used in specific situations, and it would preserve the protections provided in the Year 2000 Information and Readiness Disclosure Act.

The Leahy amendment would add that the provisions of this Act would not apply to any Y2K action brought by a consumer. The term "consumer" would be defined as an individual who acquired a consumer product for purposes other than resale. The term "consumer product" would be defined as any personal property or service which was normally used for personal, family, or household purposes.

Those favoring the amendment contended:

The Leahy amendment would bring balance to the McCain amendment. As the McCain amendment is currently drafted, it would require consumers to wait 90 days before they could go to court. Also, it would hold them to the express terms of their written contracts. Suppose, for instance, that a consumer bought software at a retail computer outlet, with a claim on the box that said, "this product is guaranteed to serve you for years to come." If that software had a Y2K failure, then the consumer would have to wait

(See other side)

YEAS (32)		NAYS (65)			NOT VOTING (3)	
Republicans (0 or 0%)	Democrats (32 or 73%)	Republicans (53 or 100%)	Democrats (12 or 27%)		Republicans (2)	Democrats (1)
Akaka	Kennedy	Abraham	Hutchison	Baucus	Crapo ⁻²	Biden ⁻²
Boxer	Kerry	Allard	Inhofe	Bayh	Gregg ⁻²	
Breaux	Kohl	Ashcroft	Jeffords	Bingaman		
Byrd	Landrieu	Bennett	Kyl	Bryan		
Cleland	Lautenberg	Bond	Lott	Dodd		
Conrad	Leahy	Brownback	Lugar	Feinstein		
Daschle	Levin	Bunning	Mack	Kerrey		
Dorgan	Mikulski	Burns	McCain	Lieberman		
Durbin	Murray	Campbell	McConnell	Lincoln		
Edwards	Reed	Chafee	Murkowski	Moynihan		
Feingold	Reid	Cochran	Nickles	Robb		
Graham	Rockefeller	Collins	Roberts	Wyden		
Harkin	Sarbanes	Coverdell	Roth			
Hollings	Schumer	Craig	Santorum			
Inouye	Torricelli	DeWine	Sessions			
Johnson	Wellstone	Domenici	Shelby			
		Enzi	Smith, Bob			
		Fitzgerald	Smith, Gordon			
		Frist	Snowe			
		Gorton	Specter			
		Gramm	Stevens			
		Grams	Thomas			
		Grassley	Thompson			
		Hagel	Thurmond			
		Hatch	Voinovich			
		Helms	Warner			
		Hutchinson				

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

up to 90 days before filing suit, and, if it turned out that the software had a disclaimer in the fine print saying that no warranty, express or implied, was given, then the consumer would be out of luck. Also, the McCain amendment would severely limit the ability of consumers to band together under class-action lawsuits, which is often one of the most effective ways to win lawsuits against manufacturers. We have offered the Leahy amendment to fix these defects. Very simply, it would exempt consumers from this bill's provisions. They would have the same legal rights to sue that they have under current Federal and State law. We remind our colleagues that we passed a similar exemption as part of the Year 2000 Information and Readiness Disclosure Act. That Act is law. We believe that passing this amendment would so improve the bill that the President may even agree to sign it instead of vetoing it. We urge our colleagues to support consumers by supporting this amendment.

Those opposing the amendment contended:

This amendment would emasculate the bill and would harm consumers. Consumers would not get any benefit from the McCain amendment provisions that would encourage manufacturers to fix quickly, within 90 days, any Y2K problems that occurred in the computer products those consumers bought. Instead, they would have to go through time-consuming and expensive litigation. Consumers are much less able to pursue that course than are businesses; it is hardly to their advantage to make them waste time and money rather than to get a quick fix of their problems within 90 days. Further, the Leahy amendment would open the door to massive and unlimited class-action lawsuits. Such cases typically result in people being represented by lawyers without those people having any idea that they are being represented, they typically result in a few lawyers becoming fabulously wealthy, and they typically result in "represented" individuals getting much less in compensation than they have experienced in losses. This amendment, in short, is not about protecting consumers, it is about protecting trial lawyers. We strongly urge its rejection.